v. *McComb City Electric Light and Power Co.*, 89 Miss. 1; *Benton* v. *North Carolina Public Service Corp.*, 165 N. C. 354; CURTIS, *supra*, § 512. An opposite conclusion was reached where child had been warned not to climb tree through which wire ran. *Brown* v. *Panola L. and P. Co.*, 137 Ga. 352. The fact that the child is not climbing trees on its parent's premises is not important, as child is not a trespasser against the electric company. *Mullen* v. *Wilkes-Barre Gas and Electric Co.*, 229 Pa. St. 54; if the child was trespassing on the land of the electric company, latter could not be held liable except on the "attractive nuisance" theory. Wires carrying current, poles, and guy wires are not generally placed in the class of "attractive nuisances," as they are not inherently attractive to children and are generally placed out of reach. See 25 L. R. A. (N.S.) 1220 and cases there cited; CURTIS, *supra*, §§ 469, 470, 471. The basis of liability is, as stated above, founded on a duty to protect "everyone who may be lawfully in proximity to its wires and liable to come accidentally or otherwise in contact with them." *Mullen* v. *Wilkes-Barre Gas and Electric Co., supra.* But the high degree of vigilance required does not make electric companies insurers. In *Adams* v. *Bullock*, 125 N. E. 93 (N. Y.) a boy swung a wire eight feet long over the parapet of a bridge. It came in contact with a trolley wire and the boy was burned. The defendant company was held not liable, as "no vigilance, unless fortified by the gift of prophecy, could have predicted the point where such an accident would occur." See note to this case in 90 CENT. L. JOUR. 125.

EMBEZZLEMENT—EVIDENCE OF INTENT.—The exclusion of testimony of conversations tending to show absence of felonious intent, by defendant with one not entitled by law to any part of the property alleged to have been embezzled, and with a lawyer as to the legality of keeping it, offered by a defendant charged with embezzlement as a bailee. *Held,* error. *Lindgren* v. *United States,* (C. C. A., 9th Circ., 1919) 260 Fed. 772.

Gilbert, J., dissented from this ruling. However, the underlying principle is clear, "Any facts which go to explain the condition of a person's mind, when such condition is at issue, may be received." WHARTON ON EVIDENCE, Sec. 254. Ross, J., giving the majority opinion of the court, cited only one case in support, *State* v. *Littschke,* 27 Ore. 189, "conversion by the defendant must have been with a felonious intention, and this was a question of fact for the jury under all the circumstances of the case." Evidence that at the time of the alleged embezzlement the accused was in debt and in need of money is admissible to show motive, *Govatos* v. *State,* 42 S. E. 708, *United States* v. *Camp,* 10 Pac. 226. Intent, whether proved directly or indirectly, is the essence of the crime. In the following cases, evidence of flight of accused, *Commonwealth* v. *Hurd,* 123 Mass. 438; letters showing plan to defraud, *People* v. *Tomlinson,* 102 Cal. 19; evidence that accused committed offenses similar to that in question, *People* v. *Gray,* 66 Cal. 271; *State* v. *Pittam,* 32 Wash. 137; was admitted to show intent. A defendant should never have fewer facilities for proving innocence than the State has for proving guilt. Any evidence tending to prove lack of felonious intent should be

allowed, providing it does not contravene other established evidentiary rules. In *Frank* v. *State,* 55 Fla. 62, the defendant propounded several questions to his witnesses to show that defendant had no criminal intent in his dealings with money intrusted to him as an agent. Objections to these questions being sustained, the court in review held the ruling error, stating the just rule, "Some latitude is to be allowed, not only in proving the offense, but on the other hand to show the bona fides of the accused."

INJUNCTION—MASTER AND SERVANT—INJUNCTION TO ENFORCE RESTRICTIVE COVENANTS.—Action to restrain former employee from entering the employment of another, in violation of a restrictive covenant that he would not work for any competitor in the United States for two years after leaving complainant's service. The purpose of the complainant is to prevent the employee from divulging trade secrets to the prospective employer. *Held,* agreement was valid, and defendant should be restrained. *Eastman Kodak Co.* v. *Powers Film Products* (Dec., 1919), 179 N. Y. S. 325.

This is a reversal of the decision rendered in the Supreme Court in September, 1919, criticized in 18 MICH. L. REV. 160. It was there pointed out that, according to the better view, the defendant should have been restrained from entering the employment of the competitors, because such restrictive covenants are treated like similar covenants in restraint of trade connected with the sale of business,—and the injunction generally issues regardless of the skill of the employee. The Appellate Court, in trying to square its decision with that of the Supreme Court, assumes that the defendant has acquired valuable trade secrets through his employment, and also that the mere rendition of service along the line of his training would necessarily impart such knowledge to some degree. Such an attempt on the part of the court seems needless, and it might better have placed its decision on the ground that the granting of the injunction was necessary, reasonable and equitable to protect the interest of the covenantee, regardless of the employee's skill. *Mahler Co.* v. *Mahler,* 160 App. Div. 548.

INSURANCE—ACCIDENT—PROXIMATE CAUSE.—Where the insured, after undergoing an operation for appendicitis, slipped from his pillow, and this caused an embolus to separate from the wound, resulting in his death, *held,* that the accident of slipping from the pillow was the proximate cause of the death and that the insurer was liable on a policy insuring against death by accidental means. *Pacific Mutual Life Insurance Co.* v. *Meldrim* (Ga., 1919), 101 S. E. 305.

The dissenting opinion took the position, that there is a material distinction between cases in which there is an independent injury merely aggravated by an existing disease, and those, like the principal case, where the accident only results from and relates to the disease. For a review of the cases on this subject, see, 9 MICH. L. REV. 365, 11 MICH. L. REV. 486, and 17 GREEN BAG, 549.